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COUNSEL/PARTIES OF RECORD	
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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
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 8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

10  
 11 RICHARD MUSSO,

Case No. 3:11-CV-00006-LRH-VPC

12 Plaintiff,

13 vs.

~~PROPOSED~~  
**AGREED PROTECTIVE ORDER**

14 EXCELLENCE IN MOTIVATION, INC.,  
 ROBERT J. MILLER, JOHN E. KERNAN,  
 15 III, and BEVERLY F. SHILLITO,

16 Defendants.  
 17 \_\_\_\_\_

18 The Court hereby approves and enters the following Protective Order (the "Protective  
 19 Order") to prevent the inappropriate dissemination of documents and information produced in the  
 20 course of formal or informal discovery, or in response to subpoenas, which may include (without  
 21 limitation) competitively sensitive and trade secret information, confidential settlements with third  
 22 parties and information implicating privacy concerns. Good cause appearing, it is hereby  
 23 ORDERED as follows:

24 **1. Scope of Order.** This Protective Order governs the use and handling of documents,  
 25 electronic information in any form, testimony, interrogatory responses, responses to subpoenas and  
 26 other information, including all copies, excerpts and summaries thereof (collectively, the "Material")  
 27 produced or given by any defendant, plaintiff, or other individual or entity (the "Producing Party") in  
 28 pre-trial proceedings in the above-captioned Litigation. Material produced in this Litigation,

1 including without limitation Material designated as "Confidential" under the provision of this  
2 Protective Order, and information derived therefrom, shall be used only for the purpose of this  
3 Litigation and any related appellate proceeding, and not for any business, competitive, personal,  
4 private, public, or other purpose whatsoever.

5       **2. Definitions.** "Confidential Material" as used in this Order shall have the following  
6 meanings: (i) Customer information, customer contracts, financial data, marketing and advertising  
7 data and plans, quotations or proposals, actual or proposed customer programs, methods of doing  
8 business, pricing, strategic or long-range plans, or internal cost data; (ii) non-public personal or  
9 financial information; (iii) personal or family photos or personal business not germane to the facts of  
10 this cause; (iv) settlement documents from unrelated cases which are considered confidential by the  
11 Producing Party; and (v) any other information understood to be confidential pursuant to Rule 26(c)  
12 of the Federal Rules of Civil Procedure.

13       **3. Designation of Confidential Material.** The Producing Party may designate as  
14 "Confidential" any Material that it produces in this Litigation which it believes constitutes, contains,  
15 reflects or discloses information meeting the definition of "Confidential Material" above. The  
16 designations will be made reasonably and in good faith.

17       **4. Production of Documents and Other Material Containing Confidential Material.**  
18 The designation of Confidential Material for the purposes of this Protective Order shall be made in  
19 the following manner:

20               (a) In the case of documents produced in discovery (including electronic  
21 documents produced in TIFF or PDF form), by marking each page containing any  
22 Confidential Material with the word "Confidential"

23               (b) In the case of electronically stored information in any form ("Electronic  
24 Data"), by designating the Electronic Data as Confidential in a cover letter accompanying the  
25 production of the Electronic Data. Where feasible, counsel for the Producing Party will also  
26 mark the disk, tape or other electronic media on which the Electronic Data is produced with  
27 the appropriate designation. If a Party reduces Confidential Electronic Data to hardcopy  
28 form, that party shall mark the hardcopy with the appropriate designation. Whenever any

1 Confidential Electronic Data is copied, all copies shall be marked with the appropriate  
2 designation.

3 **5. Persons Who May Access Confidential Material.** Except as provided in Paragraph  
4 8, absent written consent from the Producing Party or unless otherwise directed by the Court,  
5 Confidential Material may be disclosed only to the following persons:

- 6 (a) Counsel of record for the Parties and their staff;
- 7 (b) The Parties;
- 8 (c) Experts or consultants who are retained on behalf of any of the Parties to  
9 assist in the preparation of this case;
- 10 (d) Outside photocopying, graphic production services or litigation support  
11 services employed by the Parties or their counsel to assist in this Litigation, and computer  
12 service personnel performing duties in relation to a computerized litigation system;
- 13 (e) The Court in this action or any court hearing an appeal from a judgment or  
14 order rendered by the Court in this action, and court personnel;
- 15 (f) Court reporters, videographers, and stenographers; and
- 16 (g) Such other persons to whom the Producing Party agrees, in writing, that  
17 disclosure is appropriate.

18 **6. Application of this Protective Order to Persons With Access to Confidential**  
19 **Material.**

20 (a) Each person given access to Confidential Material shall be advised that the  
21 Confidential Material is being disclosed pursuant to and subject to the terms of this  
22 Protective Order and may not be disclosed or used other than as set forth in this Protective  
23 Order.

24 (b) All persons allowed access to Confidential Material under this Protective  
25 Order shall take all necessary steps to insure that access to such Material is restricted to those  
26 persons who, by the terms of this Protective Order, are allowed access to the Material. To the  
27 extent that a person allowed access to Confidential Material creates, develops, establishes, or  
28 otherwise maintains, on any computer, network, disk, tape, or other digital or analog

1 machine-readable device, any information, files, databases or programs that contain  
2 Confidential Material, such person shall take all necessary steps to insure that access to any  
3 Confidential Material is restricted to those persons who, by the terms of this Protective  
4 Order, are allowed access to the Material.

5 **7. Filing Documents Containing Confidential Material.** In the event a party wishes  
6 to use any Confidential Material, or any papers containing or making reference to the contents of  
7 such material or information, in any pleading or document filed with the Court in this Litigation,  
8 then absent consent by the Producing Party, the filing party (or by agreement, the Producing Party if  
9 advance notice is provided) shall file a motion for permission to file the pleading or document under  
10 seal explaining the reasons why there is good cause for the sealing of any part of the record in this  
11 case. The Producing Party shall also be given a reasonable opportunity to explain the need for the  
12 pleading or document to be kept under seal. A motion seeking permission to file a pleading or  
13 document under seal shall be filed and noticed for hearing prior to the due date for the particular  
14 filing. If permission to file under seal is granted by the Court, such pleading or document and  
15 Confidential Material shall be filed under seal, consistent with the rules and practices of the Court in  
16 which said materials are to be filed, until such time as the Court orders otherwise, or denies  
17 permission to file under seal. If permission to file under seal is granted only with respect to a portion  
18 of a pleading or document, the party filing the document must also file a public-record version that  
19 includes the entire filing except for the portions that are being filed under seal. If a motion for  
20 permission to file under seal is not ruled upon prior to the due date for the particular filing in  
21 question, the filing party shall file a public-record version of the document that includes the entire  
22 filing except for the portions for which permission to seal has been sought, as well as a sealed  
23 version of the document, with the Court. The sealed material, information or papers shall plainly  
24 state on the first page of any bound or stapled document "FILED UNDER SEAL PURSUANT TO  
25 PROTECTIVE ORDER" and shall be filed only in sealed envelopes on which shall be endorsed the  
26 caption of this Litigation, and a statement substantially in the following form:

27 **FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER**

28 This envelope contains documents that are subject to a Protective  
Order entered by the Court in this action. This envelope shall neither

1 be opened nor the contents revealed except by Order of the Court.

2 **8. Use of Confidential Material at Trial or Hearing.** The restrictions, if any,  
3 governing the use of Confidential Material at trial or hearings will be determined at a later date by  
4 the Court, in consultation with the Parties to this agreement.

5 **9. No Waiver of Privilege.** If information subject to a claim of attorney-client  
6 privilege, work product protection, or any other privilege or immunity is inadvertently produced,  
7 such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any  
8 claim of privilege, work product protection or other ground for withholding production to which any  
9 Producing Party would otherwise be entitled. Any inadvertently produced materials shall be returned  
10 promptly to the Producing Party upon request and all copies destroyed by all parties who have  
11 received them. Any receiving party that has disclosed inadvertently produced materials to a third  
12 party shall take reasonable efforts to retrieve the material from such third party.

13 **10. Removal of Confidential Designation.** Any Party may object to the designation of  
14 any Material as "Confidential" by giving written notice to counsel for the Producing Party (or to the  
15 Producing Party directly if no counsel has appeared on its behalf) that it objects to the designation.  
16 Such notice shall specifically identify the Material at issue and state the reasons for questioning the  
17 confidentiality designation. Within ten (10) business days after such notice, the Objecting and  
18 Producing Party shall confer in good faith to attempt to resolve any such dispute. If the Parties are  
19 unable to resolve the dispute, the Objecting Party may apply to the Court for a ruling that the  
20 Material is not appropriately designated, giving notice to the Producing Party. If such a motion is  
21 made, the Producing Party will have the burden to establish that the designation is proper. Until the  
22 Court rules on the motion, the documents shall be treated as Confidential Material, as originally  
23 designated.

24 **11. Modification of the Protective Order.** This Protective Order shall not prevent a  
25 Party from applying to the Court for relief therefrom, or from applying to the Court for further or  
26 additional Protective Orders.

27 **12. Copy of Protective Order Must be Served With Any Subpoena.** When serving  
28 any subpoena in this Litigation on a non-party to the Litigation, a copy of this Protective Order shall

1 be included with the subpoena.

2       **13. Third Party Requests for Confidential Material.** If any person receiving Material  
3 covered by this Protective Order is subpoenaed in another action or proceeding, served with a  
4 document demand, or otherwise requested to provide Material covered by this Protective Order, and  
5 such subpoena, document demand, or request seeks Material which was produced or designated as  
6 Confidential Material by any Producing Party, counsel to the person receiving the subpoena,  
7 document demand, or request shall give written notice within two (2) business days of said counsel  
8 receiving notice of service of the subpoena to counsel for the Producing Party and shall, to the extent  
9 permitted by law, withhold production of the Material until any dispute relating to the production of  
10 such Material is resolved, and in any event no Material of a Producing Party shall be produced earlier  
11 than five (5) business days after delivering written notice to counsel for the Producing Party of an  
12 intent to produce.

13       **14. Intentional or Inadvertent Unauthorized Disclosure of Confidential Material.** If  
14 any person subject to this Protective Order becomes aware that he or any other person has, either  
15 intentionally or inadvertently, disclosed Confidential Material to someone not authorized to receive  
16 such Material under this Protective Order, counsel of record for the Party involved shall immediately  
17 inform the Producing Party's counsel of record about the unauthorized disclosure, and also shall use  
18 his or her best efforts to obtain the return of all improperly disseminated copies of the Confidential  
19 Material and to prevent any further improper dissemination of the same.

20       **15. Court Retains Jurisdiction.** This Protective Order shall survive the termination of  
21 this Litigation. This Court expressly retains jurisdiction over this action for enforcement of the  
22 provisions of this Protective Order following the final resolution of this Litigation.

23       **16. Return or Destruction of Confidential Material.** Within sixty (60) days of the  
24 termination of this action, including the exhaustion of all appeals, all Confidential Material supplied  
25 by any Producing Party, including any copies thereof, as well as any summaries, notes, extracts,  
26 compilations, drawings, or other documents containing Confidential Material, shall be returned to  
27 the Producing Party or shall be destroyed and their destruction certified in writing unless otherwise  
28 agreed in writing by the parties. A copy of the written certification shall be provided to the

1 Producing Party. Notwithstanding the foregoing, counsel for the Producing Party may retain  
2 attorney work product, pleadings or other documents filed with the Court that contain Confidential  
3 Material.

4 **17. Parties May Use Their Own Confidential Documents.** Nothing in this Order shall  
5 affect a Party's use or disclosure of its own documents in any way.

6 **DATED** this 15<sup>th</sup> day of March, 2011.

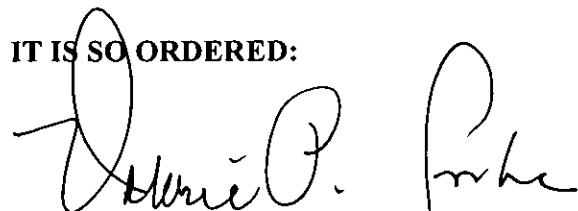
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18 **IT IS SO ORDERED:**

19   
20 **UNITED STATES MAGISTRATE JUDGE**

21 **DATED:** March 17, 2011  
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